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Janina M. Hoskins, Trustee in Bankruptcy

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

CARL ALEXANDER WESCOTT and
MONETTE ROSEMARIE STEPHENS,

Debtors.

JANINA M. HOSKINS, Trustee in
Bankruptcy of the Estate of Carl Alexander
Wescott and Monette Rosemarie Stephens,

Plaintiff,

v.

CARL ALEXANDER WESCOTT and
MONETTE ROSEMARIE STEPHENS,

Defendants.

Case No.: 12-30143 DM
(Chapter 7)

AP No. 12-3148

**PLAINTIFF'S OBJECTION TO
"NOTICE TO PARTY AFFILIATED
AGENT TO APPEAR AT TRIAL IN
LIEU OF SUBPOENA" AS TO JOSEPH
MARTIN**

Trial Date: October 2, 2013
Time: 9:30 a.m.
San Francisco Courtroom 22 - Montali

Plaintiff Janina Hoskins, Chapter 7 Trustee of the Estate of Carl Alexander Wescott and Monette Rosemarie Stephens, hereby objects to Defendant Monette Stephens' "Notice to Party Affiliated Agent to Appear at Trial In Lieu of Subpoena" as to Joseph Martin on the following grounds:

1. The statutory authorization for this procedure is set forth in F.R.Civ.P. 45(b)((2)(), which permits a subpoena to be served "...if a state statute or court rule allows service at that place

of a place of a subpoena issued by a state court of general jurisdiction...” The state statute in question here is California Code of Civil Procedure Section 1987.

2. Plaintiff is not obligated to produce Mr. Martin pursuant to California Code of Civil Procedure Section 1987(b). California Code of Civil Procedure Section 1987(b) permits a “Notice to Appear in Lieu of Subpoena” to be served as to “...a party to the record of any civil action or proceeding or ... a person for whose immediate benefit an action or proceeding is prosecuted or....an officer, director, or **managing** agent...” of the Plaintiff. Mr. Martin is not any of these entities.

3. Plaintiff has not knowledge of the exact whereabouts of Mr. Martin at this time, but based on his deposition testimony, Plaintiff is informed and believes that Mr. Martin is resident of the State of Florida. California Code of Civil Procedure Section 1989 provides that a nonresident of the State of California is not subject to service of a subpoena or Notice to Appear In Lieu of Subpoena within this state. Likewise, F.R.Civ.P. 45(b)(2)(B) provides that a subpoena cannot be used to compel the appearance of a witness at a distance of greater than 100 miles from his residence.

Date:September 25, 2013

MacConaghy & Barnier, PLC

/s/ John H. MacConaghy
By John H. MacConaghy
Attorneys for Plaintiff Janina M. Hoskins